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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

KIMBERLY KLEIN,

Plaintiff and Appellant,

v.

ROBERT G. KLEIN, as Executor, etc.,

Defendant and Respondent.

2d Civil No. B213125
(Super. Ct. No. BC 130724
(Santa Barbara County)

Michael and Kimberly Klein were the divorced parents of Talia. They agreed to modify an existing marital settlement agreement to provide child support for Talia and to require that Michael procure a life insurance policy that would guarantee those payments. The policy names the mother, as trustee for Talia's benefit. Three years later, father and daughter die in an airplane crash. Here we hold that the child's death ended the obligation to pay support and mother has no claim to the insurance proceeds. Accordingly, we affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Kimberly and Michael Klein were married for approximately 8 years. They divorced in 1997.¹ Their daughter, Talia, was born in 1994. Kimberly had primary custody of Talia.

In 1998, Michael purchased a life insurance policy in the face amount of \$1 million, designating his corporation as the beneficiary. In 1999, Michael married Robin Deshayes. In 2000, Michael amended the beneficiary designation on the policy and named Robin as the primary beneficiary, and his father, respondent Robert G. Klein, "as custodian for Talia Klein under the California Uniform Transfers to Minors Act" as the contingent beneficiary. In 2003, Michael amended the beneficiary designation as follows: "90% (ninety percent) to Kimberly C. Klein, ex-spouse, if living; otherwise to Robin Klein. [¶] 10% (ten percent) to Robin Klein, spouse, if living; otherwise to Linda Klein."

On January 8, 2004, Kimberly and Michael stipulated to a modification of child support in which Michael agreed to increase his child support obligation for Talia to \$13,250 per month. Paragraph 9 of the stipulation states: "Petitioner shall continue to maintain that certain policy of life insurance, insuring his life in an amount not less than \$1,000,000, and naming Kimberly Klein, Trustee for Talia as the irrevocable beneficiary. Said policy shall be maintained for so long as Petitioner is legally required to pay child support for Talia." Paragraph 11 of the stipulation states: "Petitioner shall pay child support at the foregoing rate . . . until the first of the following events: . . . Talia dies" The stipulation was incorporated into a court order on January 13, 2004.

On April 8, 2005, without notice to Kimberly, Michael revoked the policy's beneficiary designation and replaced it with: "Eighty-five percent (85%) to Talia Klein . . . if living; otherwise to Robin Klein, spouse. [¶] Fifteen percent

¹ We refer to the parties by their first names for clarity, not out of disrespect.

(15%) to Robin Klein, . . . spouse, otherwise to Talia Klein, daughter. [¶] Any proceeds payable to a minor will be paid to a court-appointed guardian."

On December 27, 2007, Michael and Talia died simultaneously in an airplane accident. Kimberly filed a creditor's claim against Michael's estate in the amount of \$500 million. She alleged she is Talia's sole heir and beneficiary, the sole beneficiary of Michael's will and trust, and the rightful beneficiary of the life insurance proceeds. The claim was rejected.

Kimberly then filed two complaints. The first complaint named Robin Deshayes as defendant and sought a declaration that the 2005 change of beneficiary was a nullity because the 2003 beneficiary designation was irrevocable. The second complaint, the subject of this appeal, is for breach of contract against Robert G. Klein as personal representative and executor of Michael's estate and as trustee of Michael's administrative trust. The second complaint is based on the same facts and alleges a breach of contract arising from the 2005 change of beneficiary.

A demurrer to the complaint in *Klein v. Deshayes* was sustained without leave to amend by Judge Thomas Anderle on the grounds that Kimberly either did not have standing, or, if she had standing, she sustained no damages from the alleged illegal revocation of the beneficiary designation. A demurrer to the complaint in the instant case was sustained without leave to amend by Judge James Brown for the reasons earlier stated by Judge Anderle. In this appeal, Kimberly asserts the trial court erred in sustaining the demurrer without leave to amend because Michael had no right to amend the beneficiary designation and, but for such amendment, Kimberly would be entitled to the proceeds of the life insurance policy.²

² We take judicial notice that Kimberly voluntarily dismissed her appeal in the first lawsuit.

DISCUSSION

Standard of Review

We treat a demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We determine whether the complaint states facts sufficient to state a cause of action and, if not, whether the plaintiff has shown there is a reasonable possibility the defect can be cured by amendment. (*First Nationwide Savings v. Perry* (1992) 11 Cal.App.4th 1657, 1662.) Unless clear error or abuse of discretion is shown, the trial court's judgment of dismissal following the sustaining of a demurrer will be affirmed on appeal. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1076-1077.)

Principles of Contract Interpretation

Interpretation of a stipulation entered into in a marital dissolution proceeding is a question of law and follows the general rules of contract interpretation. (See *Forgy v. Forgy* (1976) 63 Cal.App.3d 767, 772 [general rules governing interpretation of contracts apply to interpretation of separation agreement].) One of the most fundamental rules is that a party to a contract, including a settlement agreement, is bound by its terms. (*Myerchin v. Family Benefits, Inc.* (2008) 162 Cal.App.4th 1526, 1536.) A second basic principle is that interpretation of a contract must give effect to the mutual intention of the parties. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.) "' . . . 'The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.*, § 1644), controls judicial interpretation. (*Id.*, § 1638.)" [Citations.] A [contract] provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable. [Citation.] But language in a contract must be interpreted as a whole, and in the

circumstances of the case, and cannot be found to be ambiguous in the abstract."
(*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 647-648.)

*The Demurrer Was Properly Sustained Because
Michael's Performance Was Excused*

In an action on a written contract, the plaintiff must plead (1) the existence of the contract, (2) the terms which establish the obligation in issue, (3) the occurrence of any conditions precedent to enforcement of the obligation, and (4) breach of the obligation. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383.)

Performance under a contract is excused where the purpose of the contract is frustrated by the occurrence of unforeseen events or the demise of a person essential to the contract. (Civ. Code, § 1511, subd. 2; see, e.g., *La Cumbre Golf and Country Club v. Santa Barbara Hotel Co.* (1928) 205 Cal. 422, 425-426 ["Where from the nature of the contract it is evident that the parties contracted on the basis of the continued existence of a person or thing, condition or state of things, to which it relates, the subsequent perishing of the person or thing, or cessation of the existence of the condition will excuse the performance . . ."].)

The clear and unambiguous language of the stipulation shows that Kimberly and Michael intended the life insurance policy to secure Michael's child support obligation to Talia. Under the express terms of the stipulation as well as under applicable law, Michael's duty to support Talia ended at her death. (Fam. Code, § 4007.)³ Talia's demise resulted in the cessation of Michael's contractual and legal duty to support her and operated as a terminating contingency to his contractual obligation to maintain Talia, and Kimberly as trustee for Talia, as beneficiary of the policy. (See, e.g., *Scott v. Security Title Ins. & Guarantee Co.* (1937) 9 Cal.2d 606, 614 ["Breach of contract rests upon a failure to perform an

³ Family Code section 4007 states in part: "If a court orders a person to make specified payments for support of a child during the child's minority, or . . . until the death of . . . a child . . . the obligation of the person ordered to pay support terminates on the happening of the contingency."

enforceable obligation, and if there is no such obligation there can be no breach"].) There is no authority permitting a claim against a deceased spouse's estate for child support where the child support obligation has terminated. Rather, the cases hold that a charge upon the estate of a deceased parent for child support exists in the absence of a support-ending contingency. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1163-1164.) Talia's death was that contingency.

*The Demurrer Was Properly Sustained Because
Kimberly Suffered No Damage*

"A breach of contract is not actionable without damage." (*Bramalea California, Inc. v. Reliable Interiors, Inc.* (2004) 119 Cal.App.4th 468, 473; *Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 233.) Causation of damages in contract cases requires that the damages be proximately caused by the defendant's breach. (*Ibid.*; Civ. Code, §§ 3300, 3301.) Thus, it is essential to establish a causal connection between the breach and the damages sought. Or, to put it another way, the breaching party is only liable to place the nonbreaching party in the same position as if the specific breach had not occurred. (*St. Paul Fire and Marine Ins. Co. v. American Dynasty Surplus Lines Ins. Co.* (2002) 101 Cal.App.4th 1038, 1060-1061.)

"Compensatory damages for breach of contract are not measured by the gain to the breaching party. Instead, general damages are to compensate the aggrieved party for loss of the benefits [she] would have received by performance." (*County of Ventura v. Channel Islands Marina, Inc.* (2008) 159 Cal.App.4th 615, 627.) The question is: what did Kimberly lose because of Michael's alleged breach of contract? The answer is: nothing.

Kimberly cannot show she sustained damage in 2005 at the time the change in beneficiary designation occurred because Michael's death was a condition precedent to the insurance company's liability to pay benefits under the policy. (*Garage Etc. Employees Union v. Pacific Mut. Life Ins. Co.* (1969) 2

Cal.App.3d 706, 710.) Kimberly could only have sustained damage when Michael died, the beneficiary designation was triggered, and the insurance proceeds became payable. At that point, however, Talia's simultaneous death ended Michael's legal and contractual duty to pay child support and necessarily terminated any direct or indirect right Kimberly had to receive the proceeds. Therefore, Kimberly sustained no damage by reason of the breach because she had no viable claim to the insurance proceeds after Talia's death.

The judgment is affirmed. Respondent shall recover costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

James W. Brown, Judge
Superior Court County of Santa Barbara

Law Offices of Jonathan P. Chodos and Jonathan P. Chodos for
Plaintiff and Appellant.

Hill, Trager & Colton and Timothy J. Trager for Defendant and
Respondent.